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SUMMARY OF TITLE X FEDERAL REGULATIONS* - PROGRAM SERVICES

SUBJECT	REQUIREMENT REFERENCE	
INVENTIONS OR		42 CFR 59.12
DISCOVERIES	Subject to federal regulations, 45 CFR, Parts 6 and 8	
NO COERCION	Services must be provided voluntarily without coercion to protect	42 CFR 59.5 (a) (2)
	dignity of clients without regard to:	42 CFR 59.5 (a) (3)
DIGNITY	- Residency	42 CFR 59.5 (a) (5)
	- Religion	42 CFR 59.5 (a) (4)
NO DISCRIMINATION	- Creed	
	- Race, color, national origin	
	- Handicapping condition	
	- Age	
	- Sex	
	- Number of pregnancies	
	- Marital status	
CONFIDENTIALITY	Personal information must not be disclosed without client consent	40 CED 50 44
		42 CFR 59.11
	except in summary form. When provided where required by law or	
NO DEFENDAL	necessary to provide services, confidentiality must be safeguarded.	
NO REFERRAL	MPth and an artist and found for an artist and artists a	42 CFR 59.5 (b) (5)
REQUIREMENT	Without requiring referral from a private physician.	
NO ABORTIONS	Services provided must not include abortion as a method of family	42 CFR 59.5 (a) (5)
	planning.	
CLINIC SERVICES	Services must include:	42 CFR 59.5 (a) (1)
	Broad range of medically approved and accepted family planning	
	methods,	42 CFR 59.5 (a) (2)
	Natural family planning,	42 CFR 59.5 (b) (8)
	Provision for diagnosis and treatment of infertility,	42 CFR 59.5 (b) (1)
	Physician's consultation,	42 CFR 59.5 (b) (1)
	Prescription,	42 CFR 59.5 (b) (1)
	Laboratory tests (continuing supervision),	42 CFR 59.5 (b) (1)
	Contraceptive supplies,	42 CFR 59.5 (b) (1)
	Services to adolescents.	
SOCIAL SERVICES	Services must include family planning related counseling and	42 CFR 59.5 (b) (2)
	referral.	12 01 11 00.0 (b) (2)
COORDINATION AND		42 CED 50 5 (b) (4)
REFERRAL	Services must include referral for other medical and social services.	42 CFR 59.5 (b) (1)
TEL EITHE	December and the constitution of the constitut	42 CFR 59.5 (b) (9)
	Programs must have referral arrangements with other health care	42 CFR 59.5 (b) (8)
	providers, welfare departments, hospitals, and voluntary agencies.	
COMMUNITY	Consisses must include community of treaties to achieve accession	40 CED 50 5 (b) (0)
EDUCATION,	Services must include community education to achieve community	42 CFR 59.5 (b) (3)
OUTREACH, AND	understanding, inform potential clients of availability of services,	
FOLLOW UP	and promote continued participation of clinic clients.	
. 522511 51		

Note: The Title X regulations were published prior to the 1981 parental participation amendment to the Title X legislation which states, "To the extent practical, entities which receive grants or contracts under this subsection (Section 1001) shall encourage family participation in projects assisted under this subsection."

SUMMARY OF TITLE X FEDERAL REGULATIONS* - PROGRAM ADMINISTRATION

SUBJECT	SUBJECT REQUIREMENT	
TARGET POPULATION	Priority must be given to low-income persons.	42 CFR 59.5 (a) (6)
CONSUMER PARTICIPATION	Participation of consumers and community in planning, development, and implementation	42 CFR 59.5 (b) (10)
INFORMATION AND EDUCATION ADVISORY COMMITTEE	An advisory committee that consists of not less than 5 or more than 9 members broadly representative of the community for whom materials are intended. Review and approval of information and educational materials by an advisory committee before distribution. Oversight responsibility for the I & E committee(s) rests with the grantee. The grantee may delegate the I & E operations for the review and approval of materials to delegate/contract agencies. Review Criteria: Background of individuals addressed. Community standards. Factual correctness. Suitability. Documentation of committee actions.	59.5 (a) (11) and 59.6
DELEGATE PARTICIPATION	Participation of existing and potential subgrantees in policy and decision making; preparation of grant application; consolidation of proposals.	42 CFR 59.5 (a) (10) (11)
THIRD PARTY PAYMENT COLLECTIONS	Third party payments must be collected from Title XIX, Title XX, and health insurance.	42 CFR 59.5 (a) (9)
CLIENT CHARGES	No charge for services to low income (100%CSA poverty level or below) except responsible third party payor including government. Clients with incomes over 250% poverty level will be charged for reasonable cost of providing services. Other clients must be charged according to a fee schedule based on ability to pay.	42 CFR 59.5 (a) (7) 42 CFR 59.5 (a) (8) 42 CFR 59.5 (a) (8)
PHYSICIAN DIRECTOR	Medical services must be provided under direction of a physician with family planning training or experience.	42 CFR 59.5 (b) (6)
STAFF TRAINING PURCHASED SERVICES AUTHORIZATION	Orientation and in-service training must be provided to all staff. Services purchased for clients must be authorized by project director or designee	42 CFR 59.5 (b) (4) 42 CFR 59.5 (b) (7)
PURCHASED SERVICES REIMBURSEMENT RATES	Reasonable reimbursement rates for purchased services must be established and documented	42 CFR 59.5 (b) (9)

^{*}The complete text for the Title X Federal Regulations [42 CFR 59.5] is available in Attachment B of the Program Guidelines For Project Grants For Family Planning (January 2001) or on the internet at: http://www.hhs.gov/opa/familyplanning/toolsdocs/2001_ofp_guidelines_complete.pdf ***

APPLICABLE COLORADO STATE LAWS - COLORADO CONSTITUTION

Colorado Constitution Article V Section 50. Public funding of abortion forbidden

No public funds shall be used by the State of Colorado, its agencies or political subdivisions to pay or otherwise reimburse, either directly or indirectly, any person, agency or facility for the performance of any induced abortion, PROVIDED HOWEVER, that the General Assembly, by specific bill, may authorize and appropriate funds to be used for those medical services necessary to prevent the death of either a pregnant woman or her unborn child under circumstances where every reasonable effort is made to preserve the life of each.

APPLICABLE COLORADO STATE LAWS - COLORADO REVISED STATUTES

Family Planning (Title 25, Article 6 of the Colorado Revised Statutes):

AN ACT CONCERNING FAMILY PLANNING, AND PROVIDING FOR PROCEDURES, SUPPLIES, AND INFORMATION WITH RESPECT THERETO.

Be it enacted by the General Assembly of the State of Colorado;

Section 1. Chapter 66, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 32 FAMILY PLANNING

CRS 25-6-101 Legislative declaration.

- Continuing population growth either causes or aggravates many social, economic, and environmental problems, both in this state and in the nation.
- Contraceptive procedures, supplies, and information are not available as a practical matter to many persons in this state.
- It is desirable that inhibitions and restrictions be eliminated so that all persons desiring contraceptive procedures, supplies, and information shall have ready and practicable access thereto.
- Section 25-6-102 sets forth the policy and authority of this state, its political subdivisions, and all agencies and institutions thereof, including prohibitions against restrictions with respect to contraceptive procedures, supplies, and information.

PART 1

FAMILY PLANNING

CRS 25-6-102 Policy, authority, and prohibitions against restrictions.

- All medically acceptable contraceptive procedures, supplies, and information shall be readily and practicably available to each person desirous of the same regardless of sex, race, age, and income, number of children, marital status, citizenship, or motive.
- Medical evaluation and advice is encouraged for all persons seeking any contraceptive procedures, supplies, and information.
- No hospital, clinic, medical center, institution, or pharmacy shall subject any person to any standard or requirement as a prerequisite for any contraceptive procedures, supplies, or information, including sterilization, other than referral to a physician.
- No hospital, clinic, medical center, or pharmacy licensed in this state, nor any agency or institution of this state, nor any unit of local government shall have any policy which interferes with either the physician-client relationship or any physician or client desiring to use any medically acceptable contraceptive procedures, supplies, or information.
- Contraceptive procedures, including medical procedures for permanent sterilization, when performed by a physician on a requesting and consenting client, are consistent with public policy.
- Notwithstanding any other provision of this part 1, no unmarried person under eighteen years of age may consent to permanent sterilization procedures without the consent of parent or guardian.
- Nothing in this part 1 shall inhibit a physician from refusing to furnish any contraceptive procedures, supplies, or information for medical reasons.
- Dissemination of medically acceptable contraceptive information by duly authorized persons at schools, in state and county health and welfare departments, in medical facilities at institutions of higher education, and at other agencies and instrumentalities of this state is consistent with public policy.
- No private institution or physician, nor any agent or employee of such institution or physician, shall be prohibited from refusing to provide contraceptive procedures, supplies, and information when such refusal is based upon religious or conscientious objection, and no such institution, employee, agent or physician shall be held liable for such refusal.
- To the extent family planning funds are available, each agency and institution of this state and each of its political subdivisions shall provide contraceptive procedures, supplies and information, including permanent sterilization procedures, to indigent persons free of charge and to other persons at cost.

CRS 25-6-103 Department of public health and environment – powers and duties.

The department of public health and environment is authorized to receive and disburse such funds as may become available to it for family planning programs to any organization, public or private, engaged in providing contraceptive procedures, supplies, and information. Any family planning program administered by the department of public health and environment shall be developed in consultation and coordination with other family planning agencies in this state, including but not limited to the department of human services.

PART 2

FAMILY PLANNING AND BIRTH CONTROL

CRS 25-6-201 This part 2 to be liberally construed.

This part 2 shall be liberally construed to protect the rights of all individuals to pursue their religious beliefs, to follow the dictates of their own consciences, to prevent the imposition upon any individual of practices offensive to the individual's moral standards, to respect the right of every individual to self-determination in the procreation of children, and to insure a complete freedom of choice in pursuance of constitutional rights.

CRS 25-6-202 Services to be offered by the county.

The governing body of each county and each city and county or any health department thereof or any welfare department thereof may provide and pay for, and each county and each city and county or any health department thereof or any welfare department thereof may offer, family planning and birth control services to every parent who is a public assistance recipient and to any other parent or married person who might have interest in, and benefit from, such services; except that no county or city and county or department thereof is required by this section to seek out such persons.

CRS 25-6-203 Extent of services.

Such family planning and birth control services shall include: Interview with trained personnel; distribution of literature; referral to a licensed physician for consultation, examination, tests, medical treatment and prescription; and, to the extent so prescribed, the distribution of rhythm charts, drugs, medical preparations, contraceptive devices, and similar products.

CRS 25-6-204 Counties may charge for services.

The governmental unit making provision for and offering such services may charge those persons to whom family planning and birth control services are rendered a fee sufficient to reimburse the county or city and county all or any portion of the costs of the services rendered.

CRS 25-6-205 Services may be refused.

The refusal of any person to accept family planning and birth control services shall in no way affect the right of such person to receive public assistance or to avail himself of any other public benefit, and every person to whom such services are offered shall be so advised initially both orally and in writing. County and city and county employees engaged in the administration of this part 2 shall recognize that the right to make decisions concerning family planning and birth control is a fundamental personal right of the individual, and nothing in this part 2 shall in any way abridge such individual right, nor shall any individual be required to state his reason for refusing the offer of family planning and birth control services.

CRS 25-6-206 Interviews conducted in language recipient understands.

• In all cases where the recipient does not speak or read the English language, the services shall not be given unless the interviews are conducted and all literature is written in a language, which the recipient understands.

CRS 25-6-207 County employee exemption.

Any county employee or city and county employee may refuse to accept the duty of offering family planning and birth control services to the extent that such duty is contrary to his personal religious beliefs, and such refusal shall not be grounds for any disciplinary action, for dismissal, for any interdepartmental transfer, for any other discrimination in his employment, for suspension from employment with the county or city and county, or for any loss in pay or other benefits.

Minors – Age of Competence (Title 13, Article 22 of the Colorado Revised Statutes):

CRS 13-22-102 Minors – consent for medical care and treatment for addiction to or use of drugs.

Notwithstanding any other provision of law, any physician licensed to practice in this state, upon consultation by a minor as a client, with the consent of such minor client, may examine, prescribe for, and treat such minor client for addiction to or use of drugs without the consent of or notification to the parent, parents, or legal guardian of such minor client, or to any other person having custody or decision-making responsibility with respect to the medical care of such minor client. In any such case the physician or any person acting pursuant to the minor's direction shall incur no civil or criminal liability by reason of having made such examination or prescription or having rendered such treatment, but this immunity shall not apply to any negligent acts or omissions by the physician or any person acting pursuant to the physician's direction.

CRS 13-22-103 Minors – consent for medical, dental, and related care.

Except as otherwise provided in sections 16-11-311 (4,5), 18-6-101, 25-4-402, and 12-34-103 (1), C.R.S., a minor eighteen years of age or older, or a minor fifteen years of age or older who is living separate and apart from his or her parent, parents, or legal guardian, with or without the consent of his or her parent, parents, or legal guardian, and is managing his or her own financial affairs, regardless of the source of his or her income, or any minor who has contracted a lawful marriage may give consent to organ or tissue donation or the furnishing of hospital, medical, dental emergency health, and surgical care to himself or herself. Such consent shall not be subject to disaffirmance because of minority, and, when such consent is given, said minor shall have the same rights, powers, and obligations as if he or she had obtained majority. Consent to organ or tissue donation may be revoked pursuant to section 12-34-107, C.R.S.

CRS 13-22-105 Minors – birth control services rendered by physicians.

Except as otherwise provided in part 1 of article 6 of title 18, C.R.S., birth control procedures, supplies, and information may be furnished by physicians licensed under article 36 of title 12, C.R.S., to any minor who is pregnant, or a parent, or married, or who has the consent of his parent or legal guardian, or who has been referred for such services by another physician, a clergyman, a family planning clinic, a school or institution of higher education, or any agency or instrumentality of this state or any subdivision thereof, or who requests and is in need of birth control procedures, supplies, or information.

CRS 13-22-106 Minors – consent – sexual assault.

- Any physician licensed to practice in this state, upon consultation by a minor as a client who indicates that he or she was the victim of a sexual assault, with the consent of such minor client, may perform customary and necessary examinations to obtain evidence of the sexual assault and may prescribe for and treat the client for any immediate condition caused by the sexual assault.
 - Prior to examining or treating a minor pursuant to subsection (1) of this section, a
 physician shall make a reasonable effort to notify the parent, parents, legal
 guardian, or any other person having custody or decision-making responsibility
 with respect to the medical care of such minor of the sexual assault.
 - So long as the minor has consented, the physician may examine and treat the minor as provided for in subsection (1) of this section whether or not the physician has been able to make the notification provided for in paragraph (a) of this subsection (2) and whether or not those notified have given consent, but, if the person having custody or decision-making responsibility with respect to the minor's medical care objects to treatment, then the physician shall proceed under the provisions of part 3 of article 3 of title 19, C.R.S.
- Nothing in this section shall be deemed to relieve any person from the requirements of the provisions of part 3 of article 3 of title 19, C.R.S. concerning child abuse. (CRS 19-3-304 on page 12)

Mental Health and Substance Abuse Services (Title 27, Article 10):

CRS 27-10-103 Voluntary applications for mental health services.

- Nothing in this article shall be construed in any way as limiting the right of any person to make
 - voluntary application at any time to any public or private agency or professional person for
 - mental health services, either by direct application in person or by referral from any other public or private agency or professional person. Subject to section 15-14-312 (1) (a), C.R.S.
 - a ward, as defined in section 15-14-101 (4), C.R.S., may be admitted to hospital or institutional
 - care and treatment for mental illness by consent of the guardian for so long as the ward agrees to such care and treatment. Within ten days of any such admission of the ward for
 - such hospital or institutional care and treatment, the guardian shall notify in writing the court
 - which appointed the guardian of the admission.

Editors note: This version of subsection (1) is effective until January 1, 2001.

Notwithstanding any other provision of law, a minor who is fifteen years of age or older, whether with or without the consent of a parent or legal guardian, may consent to receive mental health services to be rendered by a facility or a professional person. Such consent shall not be subject to disaffirmance because of minority. The professional person rendering mental health services to a minor may, with or without the consent of the minor, advise the parent or legal guardian of the minor of the services given or needed.

Reporting Sexually Transmitted Diseases (Title 25, Article 4 of the Colorado Revised Statutes):

CRS 25-4-402 Venereal cases shall be reported – physician's immunity.

- Any physician, intern, or other person who makes a diagnosis in, prescribes for, or treats a case of venereal disease any superintendent or manager of a state, county, or city hospital, dispensary, sanitarium, or charitable or penal institution in which there is a case of venereal disease shall make a report of such case to the health authorities in accordance with the provisions of section 25-1-122 (1).
- (Deleted by amendment, L. 91, p. 945, 4, effective May 6, 1991.)
- Reports of venereal disease shall be made in accordance with the requirements set forth in section 25-1-1222 (1).
- Any physician, upon consultation by a minor as a client and with the consent of such minor client, may make a diagnostic examination for venereal disease and may prescribe for and treat such minor client for venereal disease without the consent of or notification to the parent or guardian of such minor client or to any other person having custody of or parental responsibilities with respect to such minor client. In any such case, the physician shall incur no civil or criminal liability by reason of having made such diagnostic examination or rendered such treatment, but such immunity shall not apply to any negligent acts or omissions.

Abortion (Title 18, Article 6 of the Colorado Revised Statutes):

CRS 18-6-101 Definitions.

- As used in sections 18-6-101 to 18-6-104, unless the context otherwise requires:
 - "Justified medical termination" means the intentional ending of the pregnancy of a woman at the request of said woman, by a licensed physician using accepted medical procedures.*

*WHU Note: The wording of this statute has been changed to reflect what has been historically found to be constitutional according to Colorado state law.

GUIDANCE ON COMPLYING WITH TITLE X FEDERAL REQUIREMENTS PROHIBITING ABORTION SERVICES

Section 1008 of the Public Health Services Act provides:

"None of the funds appropriated under this title (Title X) shall be used in programs where abortion is a method of family planning."

The Department of Health and Human Services (DHHS) prohibits the provision by Title X grantees of abortion as a method of family planning, as well as prohibits activities that promote or encourage the use of abortion as a method of family planning. The activities falling under this category and thus proscribed by Section 1008 and Federal Register Volume 65, No. 128 include:

General Principles:

- 1) Appointments for abortion may not be made by program personnel.
- 2) A Title X project may not provide services that directly facilitate the use of abortion as a method of family planning. This includes:
 - Payment for abortion using funds appropriated under Title X of the Public Health Service Act or using Title X project funds
 - o Calling for or making an appointment for an abortion on behalf of a client
 - Explaining and obtaining signed abortion consent forms on behalf of the party performing the abortion from clients interested in abortions
 - Provision of transportation to persons to enable them to obtain an abortion
 - Negotiating a reduction in fees for an abortion
 - Counseling that directs or encourages the client in reaching a decision
 - Directing, encouraging or assisting a client towards receiving services at a particular agency
 - Assisting in or procuring an abortion
 - o Promoting or advocating abortion within Title X program activities
 - Failing to preserve sufficient separation between Title X program activities and abortion-related activities

Counseling and Referral:

- A Title X project may not provide pregnancy options counseling which promotes abortion or encourages persons to obtain abortion, although the project must offer pregnant women the opportunity to be provided information and counseling regarding each of the following options:
 - 1.1 Prenatal care and delivery
 - 1.2 Infant care, foster care, and adoption; and
 - 1.3 Pregnancy termination

If requested to provide such information and counseling, the project must provide neutral, factual information and non-directive counseling on each of the options and referral upon request, except with respect to any option(s) about which the pregnant women indicates she does not wish to receive such information and counseling. Whenever possible, clients should be given three alternative referral sources to choose from. Feedback, e.g., quality of care provided, counseling, convenient appointments, etc., from clients referred for pregnancy related services is encouraged.

- 2) While a Title X provider may provide a referral for abortion, which may include providing a client with the name, address, telephone number, and other relevant factual information about an abortion provider, the project may not take other affirmative action to secure abortion services for the client, as noted in the "General Principles" section.
- 3) Section 205 of Public Law 94-63 states that ANY (3) person who receives, under any program receiving federal financial assistance, compensation for services, who coerces or endeavors to coerce any person to undergo an abortion or sterilization procedure by threatening such person with the loss of, or disqualification for the receipt of, any benefit or service under a program receiving federal financial assistance shall be fined not more than \$1,000 or imprisoned for not more than one year or both.

Advocacy Activities:

A Title X project may not promote or encourage the use of abortion as a method of family planning through:

- 1) Advocacy activities such as participating in debates or providing speakers to debate in opposition to anti-abortion speakers or bringing legal action to liberalize statutes relating to abortion.
- 2) Producing and/or showing films that encourages or promotes a favorable attitude toward abortion as a method of family planning. Films that present only neutral, factual information are permissible.

A Title X project may be a dues paying participant in a national abortion advocacy organization, so long as there are other legitimate program-related reasons for the affiliation (such as access to certain information or data useful to the Title X project).

A Title X project may also discuss abortion as an available alternative when a family planning method fails in a discussion of relative risks of various methods of contraception.

Separation:

Non-Title X abortion activities must be separate and distinct from Title X project activities. Where a grantee conducts abortion activities that are not part of the Title X project and would not be permissible if they were, the grantee must ensure that the Title X-supported project is separate and distinguishable from those other activities.

Separation of Title X from abortion activities does not require separate grantees or even a separate health facility, but separate bookkeeping entries alone will not satisfy the spirit of the law. Mere technical allocation of funds, attributing federal dollars to non-abortion activities, is not a legally supportable avoidance of section 1008.

Certain kinds of shared facilities are permissible, so long as it is possible to distinguish between the Title X supported activities and non-Title X abortion-related activities:

- a) A common waiting room is permissible, as long as the costs are properly prorated/allocated.
- b) Common staff is permissible, so long as salaries are properly allocated and all abortion related activities of the staff members are performed in a program which is entirely separate from the Title X project.
- c) Maintenance of a single file system for abortion and family planning is permissible, so long as costs are properly allocated.

In a hospital setting, the abortion activities must be sufficiently separate from the Title X project.

PROCEDURES TO ENSURE COMPLIANCE WITH TITLE X ABORTION SERVICES REGULATIONS

During delegate agency site visits, the following elements will be reviewed.

- Verify that brochures made available to Title X family planning clients do not list abortion as a method of family planning.
- Verify that written information given to Title X family planning clients subsequent to options counseling includes a list of providers for each of the required pregnancy options so that the client has a choice.
- Delegate agencies providing or planning to provide abortion services at a site that also provides Title X family planning services will be asked verify financial separation of Title X family planning funding and abortion service funding, including proper allocation of costs. Written verification (e.g. a letter of determination) assuring that the financial system utilized by the delegate agency separates Title X family planning service dollars and abortion service dollars must be received annually from the agency's independent audit firm. The following elements, in addition to numbers 1 and 2 above, will also be assessed during an annual site visit:
 - Verify financial separation of Title X family planning services and abortion service funding.
 - Verify that abortion services are not provided at the same time and in the same space as Title X family planning services.
 - Review procedures for making appointments for Title X family planning clients and abortion clients to assure that there is a separation of staff time for accounting purposes.
 - Verify that staff training to assure staff understanding of the need for separation of Title X funded family planning services and abortion services.
 - Verify that written procedures exist covering the above.

VOLUNTARY PARTICIPATION POLICY

Use by any individual of project services must be solely on a voluntary basis. Individuals must not be subject to coercion to receive services or to use or not to use any particular method of family planning. Acceptance of family planning services must not be a prerequisite to eligibility for, or receipt of, any other service or assistance from or participation in any other programs of the applicant [59.5 (a)(2)].

Project personnel may be subject to prosecution under Federal law if they coerce or endeavor to coerce any person to undergo an abortion or sterilization procedure.

MANDATORY REPORTING

Delegate agencies must be compliant with all applicable state laws regarding the mandatory reporting of child abuse, child molestation, sexual abuse, rape, incest, or domestic violence. Agencies must have written procedures in place demonstrating compliance.

Requirements of the Family Planning Program Staff

Family Planning Coordinators must assure that all staff is familiar with Colorado law as summarized on the following pages. At the end of the following excerpts from the Colorado Revised Statutes there are summary tables outlining: who is required to report, to whom the report is made, and what the penalties are for failure to report.

It is an expectation that the Family Planning Coordinator will solicit input from the various agencies and entities involved before writing up a procedure for how the clinic will respond to any reportable or potentially reportable situation as outlined in this policy. All Family Planning Program staff must be familiar with the policy and procedures outlined in this section.

Applicable statutes:

Colorado Revised Statutes (CRS)

CRS 18-3-402 Sexual assault.

- Any actor who knowingly inflicts sexual intrusion or sexual penetration on a victim commits sexual assault if:
 - The actor causes submission of the victim by means of sufficient consequence reasonably calculated to cause submission against the victim's will; or
 - The actor knows that the victim is incapable of appraising the nature of the victim's conduct; or
 - The actor knows that the victim submits erroneously, believing the actor to be the victim's spouse; or
 - At the time of the commission of the act, the victim is less than fifteen years of age and the actor is at least four years older than the victim and is not the spouse of the victim; or
 - At the time of the commission of the act, the victim is at least fifteen years of age but less than seventeen years of age and the actor is at least ten years older than the victim and is not the spouse of the victim...

CRS 18-6-401 Child abuse.

- A person commits child abuse if such person causes an injury to a child's life or health, or permits a child to be unreasonably placed in a situation that poses a threat of injury to the child's life or health, or engages in a continued pattern of conduct that results in malnourishment, lack of proper medical care, cruel punishment, mistreatment, or an accumulation of injuries that ultimately results in the death of a child or serious bodily injury to a child.
- Except as otherwise provided in subparagraph (III) of this paragraph (b), a person commits child abuse if such person excises or infibulates, in whole or in part, the labia majora, labia minora, vulva, or clitoris of a female child. A parent, guardian, or other person legally responsible for a female child or charged with the care or custody of a female child commits child abuse if he or she allows the excision or infibulation, in whole or in part, of such child's labia majora, labia minora, vulva, or clitoris.
- Belief that the conduct described in subparagraph (I) of this paragraph (b) is required as a matter of custom, ritual, or standard practice or consent to the conduct by the child on whom it is performed or by the child's parent or legal guardian shall not be an affirmative defense to a charge of child abuse under this paragraph (b).

CRS 19-1-103 Definitions.

As used in this title or in the specified portion of this title, unless the context otherwise requires:

- "Abuse" or "child abuse or neglect", as used in part 3 of article 3 of this title, means an act or omission in one of the following categories that threatens the health or welfare of a child:
- Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or death and either: Such condition or death is not justifiably explained; the history given concerning such condition is at variance with the degree or type of such condition or death; or the circumstances indicate that such condition may not be the product of an accidental occurrence;
- Any case in which a child is subjected to unlawful sexual behavior as defined in section 16-22-102 (9), C.R.S.;
- Any case in which a child is a child in need of services because the child's parents, legal guardian, or custodian fails to take the same actions to provide adequate food, clothing, shelter, medical care, or supervision that a prudent parent would take. The requirements of this subparagraph (III) shall be subject to the provisions of section 19-3-103.
- Any case in which a child is subjected to emotional abuse. As used in this subparagraph (IV), "emotional abuse" means an identifiable and substantial impairment of the child's intellectual or psychological functioning or development or a substantial risk of impairment of the child's intellectual or psychological functioning or development.

CRS 19-3-304 Persons required to report child abuse or neglect.

- Except as otherwise provided by section 19-3-307 and sections 25-1-122 (4) (d) and 25-4-1404 (1) (d), C.R.S., any person specified in subsection (2) of this section who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions

information report or cause a report to be made of such fact to the county department or local law enforcement agency.
Persons required to report such abuse or neglect or circumstances or conditions shall include any:
(a) Physician or surgeon, including a physician in training;
(b) Child health associate;
(c) Medical examiner or coroner;
(d) Dentist;
(e) Osteopath;
(f) Optometrist;
(g) Chiropractor;
(h) Chiropodist or podiatrist;
(i) Registered nurse or licensed practical nurse;
(j) Hospital personnel engaged in the admission, care, or treatment of clients;
(k) Christian science practitioner;
(I) Public or private school official or employee;
(m) Social worker or worker in any facility or agency that is licensed or certified pursuant to part 1 of article 6 of title 26, C.R.S.;
(n) Mental health professional;
(o) Dental hygienist;
(p) Psychologist;
(q) Physical therapist;

- (r) Veterinarian;
- (s) Peace officer as described in section 16-2.5-101, C.R.S.;
- (t) Pharmacist;
- (u) Commercial film and photographic print processor as provided in subsection (2.5) of this section;
- (v) Firefighter as defined in section 18-3-201 (1), C.R.S.;
- (w) Victim's advocate, as defined in section 13-90-107 (1) (k) (II), C.R.S.;
- (x) Licensed professional counselors;
- (y) Licensed marriage and family therapists;
- (z) Unlicensed psychotherapists;
- (aa) (I) Clergy member.
- (II) The provisions of this paragraph (aa) shall not apply to a person who acquires reasonable cause to know or suspect that a child has been subjected to abuse or neglect during a communication about which the person may not be examined as a witness pursuant to section 13-90-107 (1) (c), C.R.S., unless the person also acquires such reasonable cause from a source other than such a communication.
 - (III) For purposes of this paragraph
 - (aa), unless the context otherwise requires, "clergy member" means a priest, rabbi, duly ordained, commissioned, or licensed minister of a church, member of a religious order, or recognized leader of any religious body.
 - (bb) Registered dietitian who holds a certificate through the commission on dietetic registration and who is otherwise prohibited by 7 CFR 246.26 from making a report absent a state law requiring the release of this information;
 - (cc) Worker in the state department of human services.
 - Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, video tape, negative, or slide depicting a child engaged in an act of sexual conduct shall report such fact to a local law enforcement agency immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative, or slide attached within thirty-six hours of receiving the information concerning the incident.
 - In addition to those persons specifically required by this section to report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in abuse or neglect, any other person may report known or

suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the local law enforcement agency or the county department.

- No person, including a person specified in subsection (1) of this section, shall knowingly make a false report of abuse or neglect to a county department or local law enforcement agency.
- Any person who willfully violates the provisions of subsection (1) of this section or who violates the provisions of subsection (3.5) of this section:
 - (a) Commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.;
 - (b) Shall be liable for damages proximately caused thereby.

CRS 19-3-307 Reporting procedures.

- Reports of known or suspected child abuse or neglect made pursuant to this article shall be made immediately to the county department or the local law enforcement agency and shall be followed promptly by a written report prepared by those persons required to report. The county department shall submit a report of confirmed child abuse or neglect within sixty days of receipt of the report to the state department in a manner prescribed by the state department.
- Such reports, when possible, shall include the following information:
 - (a) The name, address, age, sex, and race of the child;
 - (b) The name and address of the person responsible for the suspected abuse or neglect;
 - (c) The nature and extent of the child's injuries, including any evidence of previous cases of known or suspected abuse or neglect of the child or the child's siblings;
 - (d) The names and addresses of the persons responsible for the suspected abuse or neglect, if known;
 - (e) The family composition;
 - (f) The source of the report and the name, address, and occupation of the person making the report;
 - (g) Any action taken by the reporting source;
 - (h) Any other information that the person making the report believes may be helpful in furthering the purposes of this part 3.
- Notwithstanding the requirements set forth in subsection (2) of this section, any officer or employee of a local department of health or state department of public health and environment who makes a report pursuant to section 25-1-122 (4) (d) or 25-4-1404 (1) (d), C.R.S., shall include only the information described in said sections.
- (a) A copy of the report of known or suspected child abuse or neglect shall be transmitted immediately by the county department to the district attorney's office and to the local law enforcement agency.
 - (b) When the county department reasonably believes a criminal act of abuse or neglect of a child in foster care has occurred, the county department shall transmit immediately a copy of the written report prepared by the county department in accordance with subsection (1) of this section to the district attorney's office and to the local law enforcement agency.
- A written report from persons or officials required by this part 3 to report known or suspected child abuse or neglect shall be admissible as evidence in any proceeding relating to child abuse, subject to the limitations of section 19-1-307.

CRS 19-3-309 Immunity from liability – persons reporting.

Any person, other than the perpetrator, complicitor, coconspirator, or accessory, participating in good faith in the making of a report, in the facilitation of the investigation of such a report, or in a judicial proceeding held pursuant to this title, the taking of photographs or X rays, or the placing in temporary protective custody of a child pursuant to section 19-3-405 or otherwise performing his duties or acting pursuant to this part 3 shall be immune from any liability, civil or criminal, or termination of employment that otherwise might result by reason of such acts of participation, unless a court of competent jurisdiction determines that such person's behavior was willful, wanton, and malicious. For the purpose of any proceedings, civil or criminal, the good faith of any such person reporting child abuse, any such person taking photographs or X rays, and any such person who has legal authority to place a child in protective custody shall be presumed.

CRS 12-36-135 Injuries to be reported – penalty for failure to report – immunity from liability.

- It shall be the duty of every licensee who attends or treats a bullet wound, a gunshot wound, a powder burn, or any other injury arising from the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument that the licensee believes to have been intentionally inflicted upon a person, or any other injury that the licensee has reason to believe involves a criminal act, including injuries resulting from domestic violence, to report such injury at once to the police of the city, town, or city and county or the sheriff of the county in which the licensee is located. Any licensee who fails to make a report as required by this section commits a class 2 petty offense, as defined by section 18-1.3-503, C.R.S., and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.
- As used in subsection (1) of this section, unless the context otherwise requires:
 - (a) "Domestic violence" means an act of violence upon a person with whom the actor is or has been involved in an intimate relationship. Domestic violence also includes any other crime against a person or any municipal ordinance violation against a person when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.
 - (b) "Intimate relationship" means a relationship between spouses, former spouses, past or
 - present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time.
- Any licensee who, in good faith, makes a report pursuant to subsection (1) of this section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making of such report, and shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.
- Any licensee who makes a report pursuant to subsection (1) of this section shall not be subject to the physician-client relationship described in section 13-90-107 (1) (d), C.R.S., as to the medical examination and diagnosis. Such licensee may be examined as a witness, but not as to any statements made by the client that are the subject matter of section 13-90-107 (1) (d), C.R.S.

MANDATORY REPORTING - ALGORITHMS <u>Child Abuse</u>

Statute: C.R.S. 19-1-103, 19-3-304,-307,-309

Definition	Required Reporters	To Whom is Issue Reported	What is Reported	Penalties for Failure to Report
19-1-103 Definitions. (1) (a) "Abuse" or "child abuse or neglect", as used in part 3 of article 3 of this title, means an act or omission in one of the following categories that threatens the health or welfare of a child: (I) Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fractures of any bone, subdural hematoma, soft tissue swelling, or death and either: Such condition or death is not justifiably explained; the history given concerning such condition or death; or the circumstances indicate that such condition may not be the product of an accidental occurrence. (II) Any case in which a child is subjected to unlawful sexual behavior as defined in section 16-22-102 (9), C.R.S.; (III) A case in which a child is a child in need of services because the child's parents, legal guardian, or custodian fails to take the same actions to provide adequate food, clothing, shelter, medical care or supervision that a prudent parent would take 18-6-401. A person commits child abuse if such person causes injury to a child's life or health, or permits a child to be unreasonably placed in a situation that poses a threat of injury to the child's life or health, or engages in a continued pattern of conduct that results in malnourishment, lack of proper medical care, cruel punishment, mistreatment, or an accumulation of injuries that ultimately results in the death of a child or serious bodily injury of a child.	19-3-304 A physician or surgeon (includes in-training), child health associate; medical examiner or coroner; dentist; osteopath; optometrist; chiropractor; chiropodist or podiatrist; registered nurse or licensed practical nurse; hospital personnel engaged in the admission, care, or treatment of clients; Christian Science practitioner; public or private school official or employee; social worker or worker in a any facility or agency that is licensed or certified pursuant to part 1 of article 6 of title 26, C.R.S.; mental health professional; dental hygienist; psychologist; physical therapist; veterinarian; peace officer; pharmacist; commercial film and photographic print processor; firefighter; victim's advocate; licensed professional counselors; licensed marriage and family therapists; unlicensed psychotherapists; clergy; registered dietician; worker in the state department of human services.	19-3-307 County department of Human services or local law enforcement agency. Report known or suspected child abuse or neglect immediately and follow with a written report Third party abuse (see definition bottom of page) is reported to law enforcement where the crime occurs. Intrafamilial abuse is reported to the department of Human services where the victim lives.	19-3-307 When possible include: Name, address, age, sex, and race of child; name and address of person responsible for suspected abuse or neglect; nature and extent of child's injuries, including previous cases of known or suspected abuse or neglect of the child or the child's siblings; names and addresses of the persons responsible for the suspected abuse or neglect, if known; the family composition, the source of the report and the name, address and occupation of the person making the report; any action taken by the reporting source; any other information the person making the report believes may be helpful.	19-3-309 grants immunity to those persons who have made a report of child abuse or neglect, thereby protecting the reporting person from civil and criminal liability as well as termination of employment Failure to report constitutes a class 3 misdemeanor. Punishment is up to six months in prison and up to \$750 fine. Additionally, the person shall be liable for damages proximately caused by failure to report.

GLOSSARY: <u>Third Party Abuse</u> is by any person who is not a parent, stepparent, guardian, legal custodian, spousal equivalent... or any person who is not included in the definition of Intrafamilial abuse. <u>Intrafamilial Abuse</u> occurs within a family context by a child's parent, stepparent, guardian, legal custodian, or relative, by a spousal equivalent...or by any other person who resides in the child's home or who is regularly in the child's home for the purpose of exercising authority over or care for the child...except if the person is paid for such care and is not related to the child.

MANDATORY REPORTING - ALGORITHMS

<u>Domestic Violence</u> Statute: C.R.S. 12-36-135

Definition	Who Reports	To Whom is Issue Reported	What is Reported	Penalties for Failure to Report
12-36-135 Any injury arising from the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument that the licensee has reason to believes to have been intentionally inflicted, or any other injury that the licensee has reason to believe involves a criminal act, including injuries resulting from domestic violence.	12-36-135 Every licensee who attends or treats any injury that the licensee has reason to believe is the result of domestic violence. When setting your agency's policy, it is our recommendation that you consult with your county District Attorney regarding how broadly to interpret "licensee." It should include anyone licensed to practice such as RN, NP, PA, MD, DO, etc.	12-36-135 Police of the city, town, or city and county or sheriff of the county in which the licensee is located.	12-36-135 Name and address of the victim. Name and address of the perpetrator, if known. Where the crime occurred.	12-36-135 grants immunity from any liability, civil or criminal to any licensee who, in good faith, makes a report Failure to report constitutes a class 2 petty offense. (Defined in 18-1.3-503) A fine of not more than three hundred dollars and/or imprisonment in the county jail for not more than ninety days.

Glossary:

<u>Domestic Violence</u> means an act of violence upon a person with whom the actor is or has been involved in an intimate relationship. Domestic violence also includes any other crime against a person or any municipal ordinance violation against a person when used as a method of coercion, control, punishment, intimidation or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.

<u>Intimate relationship</u> means a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child.

MANDATORY REPORTING - ALGORITHMS

Sexual Assault and Sexual Assault on a Child Statute: C.R.S. 18-3-402 & -405; C.R.S. 19-3-304,-307, -309

Definition	Who Reports	To Whom is Issue Reported	What is Reported	Penalties for Failure to Report
18-3-402 Sexual contact by someone not the spouse where "the victim is less than fifteen years old and the actor is at least four years older" (also contained in 18-3-405, Sexual Assault on a Child) or "the victim is at least fifteen years of age but less than seventeen years of age and the actor is at least ten years older than the victim and is not the spouse of the victim" (Bold added) This includes sexual contact, sexual intrusion, and sexual penetration as defined in C.R.S. 18-3-401 Definitions.	19-3-304 A physician or surgeon (includes in-training), child health associate; medical examiner or coroner; dentist; osteopath; optometrist; chiropractor; chiropodist or podiatrist; registered nurse or licensed practical nurse; hospital personnel engaged in the admission, care, or treatment of clients; Christian Science practitioner; public or private school official or employee; social worker or worker in any facility or agency that is licensed or certified pursuant to part 1 of article 6 of title 26, C.R.S.; mental health professional; dental hygienist; psychologist; physical therapist; veterinarian; peace officer; pharmacist; commercial film and photographic print processor; firefighter; victim's advocate; licensed professional counselors; licensed marriage and family therapists; unlicensed psychotherapists; clergy; registered dietician; worker in the state department of human services.	department of social services or local law enforcement agency. Third party perpetrators (see definitions at bottom of page) are reported to law enforcement where the crime occurs. Intrafamilial cases are reported to the department of social services where the victim lives.	19-3-307 Name, address, age, sex, and race of child; name and address of person responsible for suspected abuse or neglect; nature and extent of child's injuries, including previous cases of known or suspected abuse or neglect of the child or the child's siblings; names and addresses of the persons responsible for the suspected abuse or negligence, if known; the family composition, the source of the report and the name, address and occupation of the person making the report; any action taken by the reporting source; any other information the person making the report believe may be helpful.	19-3-309 Grants immunity to those persons who have made a report of child abuse or neglect, thereby protecting the reporting person from civil and criminal liability as well as termination of employment Failure to report constitutes a class 3 misdemeanor. Punishment is up to six months in prison and up to \$750 fine. Additionally, the person shall be liable for damages proximately caused by failure to report.

GLOSSARY: <u>Third party abuse</u> is by any person who is not a parent, stepparent, guardian, legal custodian, spousal equivalent...or any person who is included in the definition of intrafamilial abuse. <u>Intrafamilial abuse</u> occurs within a family context by a child's parent, stepparent, guardian, legal custodian, or relative, by a spousal equivalent...or by any other person who is regularly in the child's home for the purpose of exercising authority over or care for the child...except if the person is paid for such care and is not related to the child.

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) COMPLIANCE POLICY

The majority of delegate agencies fall under HIPAA as Covered Entities. Under federal law, these delegates must be compliant with HIPAA regulations. Any delegate agency that is not a Covered Entity is expected to have adequate administrative, technical and physical safeguards in place to protect personal health information under its control.

A summary of the HIPAA privacy rule is available at: http://www.hhs.gov/ocr/privacy/hipaa/understanding/summary/privacysummary.pdf

The Colorado Department of Public Health and Environment has determined that it is not a Covered Entity under HIPAA, as it does not meet the definition of a health plan, a healthcare provider billing electronically, a clearinghouse or a Medicare Drug Plan. However, CDPHE does receive Personal Health Information (PHI) from its delegates. CDPHE is committed to protecting the privacy of the individuals whose PHI it receives. CDPHE has a privacy and security program designed to meet industry standards for safeguarding information under its control, and assuring that adequate physical, administrative and technical safeguards are in place.

Privacy Rules

Accounting for Disclosures

Under HIPAA, any client may request an accounting of disclosures of her/his PHI. That accounting should note the disclosure to public health that takes place when data is entered into the IRIS system or when third-party files are submitted to CDPHE in lieu of IRIS. **You do not have to provide an accounting unless a client requests it.**

HIPAA does provide for an easy way to account for repeated disclosures made to the same entity for the same purpose. This description fits your data activities using IRIS or your own data system. Therefore, CDPHE has developed a form detailing this summary of disclosures, which follows this policy page. If a client requests an accounting of all disclosures, you can use this form to account for disclosures to CDPHE WHU.

Use of this form is provided for your benefit and is optional. Your agency's Privacy Officer can advise you on your agency's preferred procedures for accounting for disclosures.

Please note that the form does have to state a start and an end date. Should an individual request an accounting, the dates should be filled in to coincide with their dates of participation in the family planning program. However, the "First date of disclosure" should not be before 4/14/2003, the date that the HIPAA Privacy Rule took effect. It may be later if the individual became a family planning program client after that date. The last date of disclosure is the last date the individual participated in the program.

Notice of Privacy

HIPAA requires Covered Entities to have a Notice of Privacy Practice. There are many other requirements under HIPAA, but this is one that CDPHE WHU will look for during a visit. Your Notice of Privacy must be **posted** in the clinic and **given** to all clients who present for services, informing them of your agency's privacy practices in accordance with your status as a Covered Entity under HIPAA. Program staff may look for evidence that the individuals in the program have signed an

acknowledgment of receipt of the notice. The Notice of Privacy does **not** have to be signed every year. It only has to be updated if you have a change in your own privacy policies or practices.

More information about the HIPAA required content of the notice of privacy practices can be found starting on page 11 of the following document:

http://www.hhs.gov/ocr/privacy/hipaa/understanding/summary/privacysummary.pdf

HIPAA notices and acknowledgements are vital documents that should be translated into the appropriate language if the agency serves a significant number of clients who have Limited English Proficinecy (LEP) (see Section V of this Manual for more information on serving LEP clients).

Applicable HIPAA standards for Covered Entity delegate agencies:

- 1. Transaction and Code Sets
- 2. Privacy Standards
- 3. Security Rule
- 4. National Provider Identifier

More information about HIPAA can be found at: http://www.hhs.gov/ocr/hipaa/

A sample Disclosure Accounting form follows. This form can be downloaded from the Women's Health Unit website at: http://www.cdphe.state.co.us/pp/womens/FPNursingConsntsForms.html.

SAMPLE DISCLOSURE ACCOUNTING: FAMILY PLANNING PROGRAM PARTICIPANTS

The following is designed to meet the requirements of The Health Insurance Portability and Accountability Act of 1996 (HIPAA) §164.528 regarding accounting for disclosures.
(agency name, program name) provides Family Planning services under a grant from the Colorado Department of Public Health and Environment. Information on services provided under this grant is reported back to the Colorado Department of Public Health and Environment, Women's Health Unit, 4300 Cherry Creek Drive South, Denver, Colorado, 80246. Information reported includes demographic information about the participants, eligibility for services as well as services received. This reporting is done for program evaluation purposes and related public health intervention activities. The reporting is done daily as participants come to clinic and reports are prepared.
First date of disclosure:
Last date of disclosure: